

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	
FM Table of Allotments,)	MB Docket No. 08-227
FM Broadcast Stations.)	RM-11493
(Batesville, Texas))	

NOTICE OF PROPOSED RULEMAKING

Adopted: November 26, 2008

Released: November 28, 2008

Comments Date: January 21, 2009

Reply Comments Date: February 5, 2009

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Katherine Pyeatt (“Petitioner”), proposing the allotment of Channel 250A at Batesville, Texas, as its first local FM transmission service. Petitioner states her intention to file an application for Channel 250A at Batesville, if allotted. In this regard, Petitioner has concurrently filed a FCC Form 301 new station application for Channel 250A at Batesville,¹ and the necessary filing fee in accordance with the Commission's new procedures.²

2. Petitioner states that Batesville is a census designated place (CDP) in Zavala County with a 2000 U.S. Census population of 1,298 persons. Batesville has its own zip code (78829), post office, volunteer fire department, elementary school, and local church. Additionally, Petitioner states that the 2004-2005 Texas Almanac lists Batesville as having twenty businesses, receiving a credit rating by Dun & Bradstreet. Petitioner concludes that Batesville is a community that is certainly deserving of a first FM local service.

3. A staff engineering analysis indicates that Channel 250A can be allotted to Batesville consistent with the minimum distance separation requirements of the Commission’s Rules (the “Rules”) with the imposition of a site restriction located 11.4 kilometers (7.1 miles) east of the community at reference coordinates 28-58-27 NL and 99-30-12 WL. Consistent with *Auburn*,³ this allotment is contingent on the outcome of MM Docket Nos. 00-148⁴ and 01-130⁵ and MB Docket No. 05-112.⁶ Moreover, the proposed

¹ See File No. BNPH-20080812AAI.

² See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006).

³ See *Auburn, Alabama, et al*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003) (stating that parties may rely on actions taken in earlier rule making proceedings that are effective but not yet final) (“*Auburn*”)

⁴ See *Quanah, Texas et al.*, Memorandum Opinion and Order, 19 FCC Rcd 7159 (MB 2004) (dismissing a counterproposal requesting the proposed allotment of Channel 249C1 at Converse, Texas) *app. for review pending*.

⁵ See *Batesville, Texas*, Memorandum Opinion and Order, 23 FCC Rcd 640 (2008) (affirming the dismissal of a proposal requesting the allotment of Channel 250A at Batesville, Texas) *appeal pending, sub nom Charles Crawford v. FCC & USA*, No. 08-1059 (D.C. Circuit)

(continued...)

allotment of Channel 250A at Batesville is located 320 kilometers from the Mexican Border. Therefore, Mexican concurrence has been requested.

4. We find that the Petitioner's proposal warrants consideration because it could provide the community of Batesville with its first local FM transmission service. Therefore, we will solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Rules, with respect to Batesville, Texas:

Community	Channel No.	
	Present	Proposed
Batesville, Texas	-----	250A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

6. Interested parties may file comments on or before January 21, 2009, and reply comments on or before February 5, 2009, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, as follows:

Katherine Pyeatt
2215 Cedar Springs Rd. #1910
Dallas, Texas 75201

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel
1050 17th Street, N.W.
Suite 600
Washington, D.C. 20036

7. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission.**

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⁶ See *Fredericksburg, Texas et al.*, Memorandum Opinion and Order, 22 FCC Rcd 10883 (MB 2007) (dismissing a counterproposal requesting the proposed allotment of Channel 249C1 at Converse, Texas) *app. for review pending*.

Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

8 The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

9. For further information concerning this proceeding, contact Rolanda F. Smith, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.